

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5592 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SAURASHTRA KUTCH STOCK EXCHANGE LTD.

Versus

UNION OF INDIA

Appearance:

MR DH WAGHELA for Petitioner
MR JAYANT PATEL for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 19/08/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Rule. Mr. Jayant Patel, learned Central Government Standing Counsel, waives service of rule for respondent No.1.

This petition is filed against the order passed by the Commissioner (Appeals), Central Excise & Customs, Ahmedabad on 27.4.1998.

Being aggrieved by the order passed by the Collector of Customs, an appeal was filed before the Appellate Authority under Section 35 of the Central Excise Act, 1944. The appeal was barred by four days. The Appellate Authority was of the view that since the appeal was filed at a belated stage and there was delay of four days, the appeal was liable to be dismissed.

Looking to Section 35, it is clear that an appeal should be filed within a period of three months. The proviso, however, enables the Appellate Authority to condone delay upto three months. Hence, there is power to condone delay. The delay was not gross or inordinate. In the facts and circumstances of the case, therefore, the delay of four days requires to be condoned. The order passed by the Appellate Authority cannot be sustained. The delay is accordingly condoned. Rule made absolute. No costs.

The matter will now go back to the Appellate Authority. The Appellate Authority will hear and decide the matter in accordance with law. We may state that we are not expressing any opinion on merits. As and when the appeal is placed for hearing, it will be decided by the Appellate Authority on its own merits, in accordance with law.
